



## Tax alert: Transfer of land as part of slump sale, eligible for exemption under section 54EC

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The Hyderabad Bench of the Income-tax Appellate Tribunal has rendered its decision that a taxpayer would be eligible for exemption under section 54EC of the Income-tax Act, 1961 (ITA), on sale of land which was part of a slump sale covered under section 50B of the ITA.

### In a nutshell



On a conjoint reading of sections 50B (1) and 54EC of the ITA, the profits/gains arising from the slump sale are held to be capital gains arising from the transfer of a long-term capital asset. Therefore, the pre-condition under section 54EC of the ITA that capital gain arises from the transfer of a long-term capital asset [being land or building or both], was satisfied to the extent the sale consideration was linked to the 'book value' of the long-term capital asset i.e. the land or building or both.



The claim for deduction under section 54EC pre-supposes the capital gain arising from a transfer of a long-term capital asset [being land or building or both]. On the other hand, the profits/gains arising from the slump sale are chargeable to income tax as capital gains arising from the long-term capital asset, except for in a case where the capital asset, i.e., undertaking, is owned and held by the taxpayer for not more than 36 months immediately preceding the date of transfer.



The 'return of income' filed by the taxpayer in ITR 6 in Column 2 had a provision for claiming deduction under 54EC of the ITA against the full value of the consideration received on slump sale.



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## **Background:**

- The taxpayer<sup>1</sup> is a company engaged in the business of manufacturing of crop protection chemicals/insecticides. The company had filed its return of income for financial year (FY) 2019-20 corresponding to Assessment year (AY) 2020-21, and claimed deduction under section 54EC of the Income-tax Act, 1961 (ITA) [relating to capital gains not to be charged on investment in certain bonds].
- The Assessing Officer (AO) passed his assessment order and assessed the income of the taxpayer as was originally returned.
- Subsequently, the Principal Commissioner of Income-tax (PCIT) initiated proceedings under section 263 of the ITA [related to revisionary proceedings] and, *inter-alia*, observed the following:
  - The taxpayer had carried out the slump sale of its manufacturing unit at the Special Economic Zone (SEZ).
  - The taxpayer had, against the profits/gains arising from the aforesaid slump sale of its unit, claimed deduction under section 54EC of the ITA amounting to INR 5 million.
  - Hence, the taxpayer was not entitled to claim deduction under section 54EC of the ITA, as it was available only in the case of the sale of a long-term capital asset [being land or building or both].
  - The taxpayer had sold its ongoing business concern, being the SEZ unit, as a slump sale under section 50B of the ITA [relating to computation of capital gains on slump sale] and therefore, it was not entitled to claim deduction under section 54EC of the ITA.
- The taxpayer contended as follows:
  - It had sold the SEZ unit as a slump sale, which included land, on which tax was deducted at source (TDS) on the sale consideration. Therefore, its claim for deduction under section 54EC of the ITA was correct.
  - There was no restriction under the provisions of sections 54EC or 50B of the ITA for claim under section 54EC of the ITA against the sale consideration received under slump sale.
  - The return of income filed in the Form notified by the Revenue authorities i.e. Income-tax return form (ITR Form No. 6), provided an option to claim deduction under section 54EC of the ITA against the full value of consideration received from the slump sale.
- However, the PCIT held that in the case of slump sale, the entire business undertaking was to be considered as an 'asset' for transfer instead of considering individual assets within the business undertaking. Therefore, in the absence of there being any transfer of long-term capital asset [being land or building or both], the taxpayer's claim for deduction under section 54EC of the ITA against the consideration received on the slump sale was not acceptable.

Accordingly, the PCIT held that the order passed by the AO was erroneous insofar as it was prejudicial to the interest of the Revenue.

- Aggrieved, the taxpayer filed an appeal before the Hyderabad Bench of the Income-tax Appellate Tribunal (ITAT).

## **Relevant provisions in brief:**

Extracts of sections 50B, 54EC and 2(42C) of the ITA:

**“Section 50B: Special provision for computation of capital gains in case of slump sale.**

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<sup>1</sup> Nete Matrix Corp Care Pvt Ltd vs DCIT [2025] 176 taxmann.com 504 (Hyderabad – Trib.)

50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.....”

**“Section 54EC: Capital gain not to be charged on investment in certain bonds.**

54EC. (1) Where the capital gain arises from the transfer of a long-term capital asset, being land or building or both, (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45:

Provided that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees.....”

**“Section (42C) - "slump sale"** means the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such transfer.

*Explanation 1.—For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).*

*Explanation 2.—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.*

*Explanation 3.—For the purposes of this clause, "transfer" shall have the meaning assigned to it in clause (47);]"*

**Decision of the ITAT:**

The ITAT noted / observed as follows:

- As per section 50B of the ITA, profits/gains arising from the slump sale of any capital asset, owned and held by the taxpayer for more than 36 months immediately preceding the date of its transfer, shall be chargeable to income tax as capital gains arising from the transfer of a **long-term capital asset**.
- On a conjoint reading of sections 50B(1) and 54EC of the ITA, the profits/gains arising from the slump sale are held to be capital gains arising from the transfer of a **long-term capital asset**. Therefore, the pre-condition under section 54EC of the ITA that a capital gain arises from the transfer of a **long-term capital asset** [being land or building or both], was satisfied to the extent the sale consideration was linked to the 'book value' of the long-term capital asset i.e. the land or building or both.
- The claim for deduction under section 54EC pre-supposes the capital gain arising from a transfer of a **long-term capital asset [being land or building or both]**. On the other hand, the profits/gains arising

from the slump sale are chargeable to income-tax as capital gains arising from the **long-term capital asset**, except for in a case where the capital asset is owned and held by the taxpayer for not more than 36 months immediately preceding the date of transfer.

- The sale of the SEZ unit by the taxpayer as slump sale included land (at book value), as also disclosed in Column 6(b) in 'Form No. 3CA' [tax audit report]. Therefore, the profits/gains from the slump sale though restricted to the extent of the 'book value' of the land, was to be allowed as a deduction to the taxpayer under section 54EC of the ITA.
- Further, the 'return of income' filed by the taxpayer in ITR 6 in Column 2 itself had a provision for claiming deduction under 54EC of the ITA against the full value of the consideration received on slump sale.
- The slump sale effected by the taxpayer included the transfer of a long-term capital asset including land with a book value, therefore, there was no justification for the PCIT to decline its claim for deduction under section 54EC of the ITA.
- Also, the legislature in the return of income, i.e., ITR-6, in itself provided for disclosing a claim for deduction under section 54EC of the ITA from the full value of consideration received on slump sale. Therefore, the said fact itself establishes that the AO, while framing the assessment, had, based on a plausible view, allowed the taxpayer's claim for deduction under section 54EC of the ITA amounting to INR 5 million.

In view of the above, the ITAT held that the PCIT was wrong in holding that the AO's order was erroneous insofar as it was prejudicial to the interest of the Revenue, and that the AO had wrongly allowed the taxpayer's claim for deduction under section 54EC of the ITA.

#### **Comments:**

The income-tax law provides exemption from capital gains on sale of land or building or both if such capital gains are invested in certain notified bonds. However, a question may arise as to whether in case of a slump sale which also includes land or building or both, whether such exemption from capital gains would be available or not?

The ITAT, in this ruling, has held the following:

- On a conjoint reading of sections 50B(1) and 54EC of the ITA, the profits/gains arising from the slump sale are held to be capital gains arising from the transfer of a **long-term capital asset**. Therefore, the pre-condition under section 54EC of the ITA that a capital gain arises from the transfer of **long term capital asset** [being land or building or both], was satisfied to the extent the sale consideration was linked to the 'book value' of the long-term capital asset i.e. the land or building or both.
- The claim for deduction under section 54EC presupposes the capital gain arising from a transfer of a **long-term capital asset [being land or building or both]**. On the other hand, the profits/gains arising from the slump sale are chargeable to income tax as capital gains arising from the **long-term capital asset**, except for in a case where the capital asset is owned and held by the taxpayer for not more than 36 months immediately preceding the date of transfer.
- The 'return of income' filed by the taxpayer in ITR 6 in Column 2 had a provision for claiming deduction under 54EC of the ITA against the full value of the consideration received on slump sale.

Taxpayers with similar facts may want to evaluate the impact of this ruling to the specific facts of their cases.

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